

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 703 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE S.M.SONI

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

BHALAJI SADAJI THAKOR

Appearance:

PUBLIC PROSECUTOR for Petitioner

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE S.M.SONI

Date of decision: 10/10/97

ORAL JUDGEMENT (Per Soni, J.)

The State has filed this appeal for enhancement of sentence against the judgment and order dated 30.6.1997 passed by Additional Sessions Judge, Mehsana in Sessions Case No. 43 of 1997.

2. Learned Additional Sessions Judge has convicted the accused under section 304 Part.II of the Indian Penal Code and has awarded sentence of two years rigorous imprisonment and to pay a fine of Rs.500/-, in default of payment of fine, further rigorous imprisonment for three

months. This judgment and order is challenged in this appeal.

3. Learned Additional Sessions Judge has relied on the evidence of only one witness, viz: the wife of the deceased, and has discussed her evidence in para 12 of the judgment. According to the learned Additional Sessions, the genesis of the quarrel though not stated before the police but stated before the Court, cannot be said to be a contradiction. This apart, according to the eye witness, the incident took place at the place where about four other persons were sleeping. In the course of assault, though the victim shouted, the said persons have not awakened. However, when they awoke, the accused ran away. The injuries are internal injuries in the belly. There are no external injuries on the belly part though according to the prosecution, kicks were given when shoes were put on by the accused. In any case, learned Additional Sessions Judge has taken a view that the offence does not fall under section 302 of the Penal Code.

4. For the aforesaid reasons, we do not find any reason to interfere with the finding of the learned Additional Sessions Judge that as to the quantum of sentence particularly when the allegation of the prosecution is that the victim was picked up and was thrown away and kicks and fist blows were given.

5. We also do not find any reason to to enhance the sentence awarded under section 304 Part II of the Penal Code.

In the result, this appeal stands dismissed.
csm./ -----